

## Remarks

Claims 26-52 are now pending in this application. Applicants have cancelled claims 1-25 and present claims 26-52 to clarify the present invention. Applicants respectfully request favorable reconsideration of this application.

Applicants have renumbered the claims and amended the dependency of the claims to reflect the renumbering. Accordingly, Applicants respectfully request withdrawal of the objection to the claims.

The Examiner rejected claims 26, 28, 31-35, 37-44, 47 and 48 under 35 U.S.C. § 102(b) as being unpatentable over U.S. patent 6,931,994 to Lloyd (Lloyd '994). The Examiner rejected claims 29 and 30 under 35 U.S.C. § 103(a) as being unpatentable over Lloyd '994 in view of U.S. patent 2,944,763 to Grandgent et al. The Examiner rejected claim 46 under 35 U.S.C. § 103(a) as being unpatentable over Lloyd '994. The Examiner rejected claim 50 under 35 U.S.C. § 103(a) as being unpatentable over Lloyd '994 in view of U.S. patent 6,598,534 to Lloyd (Lloyd '534).

Lloyd '994 does not disclose the invention recited in claim 26 since, among other things, Lloyd '994 does not disclose a warhead that includes second part including a control element. Rather, Lloyd '994 discloses that the guidance subsystem 18 located in the warhead 10, as illustrated in Fig. 1A. This guidance subsystem appears to correspond to a control unit located in a missile, since the warhead 10 disclosed by Lloyd '994 is not releasable from the missile. The

invention recited in claim 26 provides an advantage that information on, for example, target selection, may be communicated directly to the warhead, including when the warhead is in flight on its way to a target, as described in paragraph 0058 of the application as published.

Lloyd '994 also does not disclose a control configured to control target selection of a warhead and to receive signals permitting modification of at least one of target selection and desired effect of the warhead during firing or in flight. As described at col. 1, lines 37-40, Lloyd '994 discloses a warhead for destroying enemy targets including biological bomblets and/or chemical submunition payloads. The warhead functions in a predetermined way in which the first section 14 is deployed prior to section 16. Along these lines, the projectiles of the kinetic energy rod section are deployed first in the trajectory path of the target and the blast fragmentation section deployed second proximate the target. It is clear that in the tandem warhead disclosed by Lloyd '994, the deployment of the sections occurs in a predetermined way, and therefore it is clear that the guidance subsystem disclosed by Lloyd '994 is not designed to detonate at least one of the first and second explosive sections as a function of the control signal.

Furthermore, the warhead recited in claim 26 includes a control element that is configured to control working of the warhead as a function of a control signal. The control element is configured to control detonation and target selection of the warhead and to receive signals permitting modification of at least one of target selection and desired effect of the warhead during firing or in flight. This can permit the warhead to defeat different target types. Thus, control can select the type of the target. Depending on the type of the target, the first module can be made such that it withstands penetration of a target or alternatively that it opens

before striking a target. This mode of action leads to a desired effect and it can also be upgraded during flight.

In view of the above, Lloyd '994 does not disclose all elements of the invention recited in claims 26, 28, 31-35, 37-44, 47 and 48. Since Lloyd '994 does not disclose all elements of the invention recited in claims 26, 28, 31-35, 37-44, 47 and 48, the invention recited in claims 26, 28, 31-35, 37-44, 47 and 48, is not properly rejected under 35 U.S.C. § 102(b). For an anticipation rejection under 35 U.S.C. § 102(b) no difference may exist between the claimed invention and the reference disclosure. *See Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q. 841 (C.A.F.C. 1984).

Along these lines, anticipation requires the disclosure, in a cited reference, of each and every recitation, as set forth in the claims. *See Hodosh v. Block Drug Co.*, 229 U.S.P.Q. 182 (Fed. Cir. 1986); *Titanium Metals Corp. v. Banner*, 227 U.S.P.Q. 773 (Fed. Cir. 1985); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986); and *Akzo N.V. v. U.S. International Trade Commissioner*, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986).

The combination of Lloyd '994 and Grandgent et al. does not suggest the invention recited in claims 29 and 30 since, among other things, the combination does not suggest a warhead that includes a second part including a control element or a control configured to control target selection of a warhead and to receive signals permitting modification of at least one of target selection and desired effect of the warhead during firing or in flight. The Examiner cited Grandgent et al. as suggesting an authorized user sending signals. Even if Grandgent et al.

suggested such elements, Grandgent et al. does not suggest the elements of the invention not suggested by Lloyd '994. Therefore, the combination of Lloyd '994 and Grandgent et al. does not suggest the invention recited in claims 29 and 30.

Lloyd '994 does not suggest the invention recited in claim 46 since, among other things, as described above, Lloyd '994 does not suggest a warhead that includes a second part including a control element or a control configured to control target selection of a warhead and to receive signals permitting modification of at least one of target selection and desired effect of the warhead during firing or in flight. Even if Lloyd '994 were provided with wireless transmission as suggested by the Examiner, Lloyd '994 would not suggest the aspects of claim 26, from which claim 46 depends, not suggested by Lloyd '994. Therefore, Lloyd '994 does not suggest the invention recited in claim 46.

The combination of Lloyd '994 and Lloyd '534 does not suggest the invention recited in claim 50 since, among other things, the combination does not suggest a warhead that includes a second part including a control element or a control configured to control target selection of a warhead and to receive signals permitting modification of at least one of target selection and desired effect of the warhead during firing or in flight. The Examiner cited Lloyd '534 as suggesting releasing a warhead as a function of information on a target. Even if Lloyd '534 were to suggest such, Lloyd '534 does not suggest the elements of the claimed invention not suggested by Lloyd '994. Therefore, the combination of Lloyd '994 and Lloyd '534 does not suggest the invention recited in claim 50.

In view of the above, the references relied upon in the office action do not disclose or suggest patentable features of the claimed invention. Therefore, the reference relied upon in the office action do not anticipate the claimed invention or make the claimed invention obvious. Accordingly, Applicants respectfully request withdrawal of the rejections based upon the cited references.

In conclusion, Applicants respectfully request favorable reconsideration of this case and early issuance of the Notice of Allowance.

If an interview would advance the prosecution of this case, Applicants urge the Examiner to contact the undersigned at the telephone number listed below.

The undersigned authorizes the Commissioner to charge fee insufficiency and credit overpayment associated with this communication to Deposit Account No. 22-0261.

Respectfully submitted,

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